IN THE HIGH COURT OF BOMBAY AT GOA

First Appeal No.77/1999

1.Special Land Acquisition Officer,
(North Goa), Irrigation Department,
Mapusa, Bardez, Goa.

2.Executive Engineer,
Works Division VI,
Irrigation Department,
T.I.P. Office Complex,
Colvale Road,
Bardez, Goa. ..... Appellants.

V/s.

Shri Vassudev Vishnu Vaze
Nanoda, Latambarcem, P.O. Assonora
Goa Assonora, Goa ..... Respondent.

Mr. H.R. Bharne, Government Advocate for the appellants.

Mr. J.P. Mulgaonkar, Advocate for the respondent.

CORAM : N.A. BRITTO, J.

DATE : APRIL 20, 2004.

ORAL JUDGMENT :

The State of Goa, through the Special Land Acquisition Officer, Irrigation Department, Mapusa, and the Executive Engineer, Works Division VI, Irrigation Department, have preferred this appeal against the Judgment / Award dated 31st March, 1999 of the learned Addl. District Judge, Mapusa

('Reference Court', for short) by which the reference Court has enhanced the compensation awarded by the Land Acquisition Officer from Rs.8/- per sq. metre to Rs.17/- per sq. metre.

2. Briefly stated, by virtue of the Notification issued under Section 4(1) of the Land Acquisition Act, 1894 ('Act', for short), published in the Official Gazette dated 14.11.1991 the Government acquired 1,10,110 sq. metres of land and in that was included 6,700 sq. metres belonging to the respondent surveyed under No.514 of Latambarcem Village in Bicholim Taluka.

3. The Special Land Acquisition Officer, by his Award dated 8.10.1992 awarded to the respondent compensation for the said land at the rate of Rs.8/- per sq. metres and the respondent being dis-satisfied with the same sought a reference to be made under Section 18 of the Act, and, as already stated, the reference Court has enhanced the compensation payable to the respondent at the rate of Rs.17/- per sq. metre.

4. The learned Reference Court, in enhancing the said compensation payable to the respondents, relied upon a sale deed dated 9.9.1988, in respect of a plot of land admeasuring 260/- sq. metres which was sold at the rate of Rs.58/- per sq. metre.

5. The learned Reference Court found that the said plot of land of the sale deed dated 9.9.1988 Exhibit AW.1/B was situated adjacent to the National

Highway proceeding from Assonora to Dodamarg, but the acquired property was situated half a kilometre away from the same and the Court deducted 50 % of the sale price of Rs.58 and reduced the same at Rs.29/- per sq. metre. The Reference Court, thereafter, placing reliance on the case of ***K. Vasundaradevi v. Rev. Div. Officer***, (AIR 1995 SC 2481) deducted further 40 % towards the developmental charges and fixed the market rate payable to the respondents of Rs.17/- per sq. metre. Although the said sale deed was a pre-notification sale deed of about 3 years prior to the date of Notification, the learned reference Court did not award any increase in the price to the respondent.

6. The acquired property was situated, according to AW.1, Shri Vaze, the attorney of the respondent, at about two and half kilometres away from Assonora; while, according to the appellants' Engineer (RW.1) Mr. P.P. Mukundan, the acquired land was situated at a distance of about 4 kms. away from Assonora market, and, as common knowledge goes, basic amenities are available in the Village of Assonora. However, the respondent had not brought any evidence on record to show whether the acquired property was situated either on the left side of the said National Highway or on the right side of the said National Highway, nor the respondent had brought any evidence on record to show in which direction the said plot of the said sale deed was situated at a distance of about half a kilometre from the acquired land, i.e. to say, whether it was situated towards the north - towards Dodamarg or towards the south – towards Assonora or any other direction.

7. At the time of arguments, Shri Bharne, the learned Government Advocate has submitted that the property of the respondent, a portion of which was acquired, was situated in the orchard zone and unless formalities were completed, the same could not be put to building activities or for residential purposes. Learned Advocate Shri Bharne has next submitted that the plot of sale deed Exhibit AW.1/B being of smaller area of 260 sq. metres, could not have been used as a basis while fixing the rate of a large property which was acquired and which was more than 200 % of the area of the plot of the sale deed and considering the same, the learned Reference Court ought to have made a reduction of more than 40 %. In support of his submission, Shri Bharne has placed reliance on the cases reported in the ***Land Acquisition Officer, Hyderabad and others vs. Male Pullamma and ors.,*** 1996(8) SCC 247, ***P. Rajan and another vs. Kerala State Electricity Board and anr.,*** (1997) 9 SCC 330; and ***State of Maharashtra and ors. vs. Digamber Bhimashankar Tandale and ors. ,*** 1996(2) SCC 583.

8. On the other hand, learned Advocate Shri J.P. Mulgaonkar on behalf of the respondent, has submitted that assuming that the acquired property was situated in the orchard zone, it is nobody's case that the change of zone was impossible under the Goa Town & Country Planning Act and the Rules framed thereunder. Shri Mulgaonkar has further submitted that the learned reference Court did consider the negative factors of the respondent's property in relation to the plot of Sale Deed dated 9.9.1988 (Exhibit AW.1/B) and after considering the said negative factors, has made necessary deductions and brought down the price from Rs.58/- to Rs.17/- per sq.

metres. Shri Mulgaonkar has submitted that considering the location of the acquired property, the price now ordered to be paid by the reference Court of Rs.17/- per sq. metre could not be said to be more and it could not be less than Rs.17/- per sq. metre.

9. In the case of ***Land Acquisition Officer, Hyderabad and others vs. Male Pullamma and ors.*** (supra), the Hon'ble Supreme Court noted that the lands of that case, on the date of Notification, were admittedly lands which had been used for agricultural purposes and part of land was used for poultry purposes and under those circumstances, the Supreme Court observed that it could not be said that the lands had potentiality to be used as building sites. The Supreme Court then took note of the fact that although the sale deed (Exhibit-A4) was executed just before the Notification under Section 4(1) of the Act, it was in respect of an extent of 198 sq. yards which worked out to Rs.30/- per sq. yard and that by no stretch of imagination it could form the sole basis for determination of compensation and once the sale deed (Exhibit AW.4) was excluded from consideration, the acquired land could not be assessed as a land having building potential. The Supreme Court further observed that the question of deduction would arise only when the lands are found to have potential value and there is evidence of development in the neighbourhood. (emphasis supplied). In the case of ***P. Rajan and another vs. Kerala State Electricity Board and anr .*** (supra), the land covered by sale transaction was situated within the Municipal limits at a distance of 2.5 Kilometres from the acquired land. The Hon'ble Supreme Court further held that the post-notification sale in respect of a smaller extent of land does

not furnish any reasonable basis for determination of the market value and compensation.

10. In the case of ***State of Maharashtra and ors. vs. Digamber Bhimashankar Tandale and ors.*** (AIR 1995 SC 248), the Hon'ble Supreme Court found that the acquired lands were agricultural lands situated within the Municipal limits and although the lands were converted for non-agricultural purposes, the Hon'ble Supreme Court found that there was no potential value of the said land being used for the building purposes.

11. In the case of ***K. Vasundaradevi v. Rev. Div. Officer*** (AIR 1995 SC 248) on which reliance was placed by the learned reference Court, the Supreme Court observed that the reliance placed on genuine and reliable sale instances of smaller land as comparative to the land under the acquisition, cannot find sole basis to determine the market value of large tracts of land under acquisition and that sufficient deductions should be made to arrive at such market value. The Supreme Court found that 40 % of deduction by the High Court was justified in the circumstances and facts of that case.

12. As already stated, the respondent herein had examined his attorney (AW.1) Shri Vaze who had produced the sale deed dated 9.9.1988 and in support of the same had examined AW.2, Shri Vaman Kalangutkar, the Purchaser of the plot of the said sale deed. The appellants had examined their Assistant Engineer Shri Mukundan (RW.1).

13. It is now well settled by catena of decisions of the Hon'ble Supreme Court that it is for the applicant to prove that the award of the Land Acquisition Officer is inadequate, and, this can be done only by evidence which is cogent and acceptable. It is also well settled that before a sale deed can be used as a guide to fix the compensation of the acquired land, comparison has to be shown of the plot of the sale deed with the acquired land and it is only then that the question of deduction comes after comparing the advantages or disadvantages of the acquired land in relation to the plot of the sale deed. In this context, reference to the case of ***Special Deputy Collector and another vs. Kurra Sambasiva Rao and others***, (AIR 1997 SC 2625) will not be out of place. In this case, the Hon'ble Supreme Court has held that the burden of proof that the amount awarded by the LAO/Collector is not adequate, is always on the claimant and the burden is to adduce relevant and material evidence to establish that the acquired lands are capable of fetching higher market value than the amount awarded by the LAO/Collector or that the LAO/Collector proceeded on a wrong premise or applied a wrong principle of law. A reference could also be made to the case of ***Shaji Kuriakose and another vs. Indian Oil Corporation Ltd.,*** reported in (2001) 7 SCC 650, wherein the Supreme Court has observed that :

> "Comparable sales method of valuation is preferred because it furnishes the evidence for determination of the market value of the acquired land at which a willing purchaser would pay for the acquired land if it had been sold in the open market at the time of issue of notification under Section 4 of the Act and there are certain factors which are required to be fulfilled and on fulfillment of those factors, the compensation can be awarded according to the value of the land reflected in the sales, the factors, being inter alia (1) the sale must be a genuine transaction, (2) that the sale deed must have been

> executed at the time proximate to the date of issue of notification under Section 4 of the Act, (3) that the land covered by the sale must be in the vicinity of the acquired land, (4) that the land covered by the sales must be similar to the acquired land, and (5) that the size of plot of the land covered by the sales be comparable to the land acquired and if all these factors are satisfied, then there is no reason why the sale value of the land covered by the sales be not given for the acquired land"

14. The applicant has failed to produce any evidence before the learned Reference Court as to what was the entire area of his property which was acquired. It is true that AW.1, Shri Vaze had stated that 6700 sq. metres were acquired by the Government and another 10,000 sq. metres were rendered useless. But one certainly could not jump to the conclusion that the entire area of the respondent's property was 16,700 sq. metres. I have already noted that the respondent failed to bring on record the situation of the acquired property in relation to the said road which proceeds from Assonora – Dodamarg and whether it was on the left side of the road or the right side of the same. The respondent was certainly required to place necessary materials on record if the respondent required the reference Court to determine the market value of the acquired land. There is no doubt that in terms of Section 17 of the Town & Country Planing Act, a revision of origional plan is permissible, but the fact remains that at the time of acquisition, the property was located in the orchard zone as shown in the regional plan in terms of Section 9 of the Goa Town & Country Planning Act, 1974. This aspect does not appear to have been sufficiently considered by the learned Reference Court. Likewise, the learned Reference Court also does not appear to have considered to make any deductions towards largeness of

the area of the acquired property which was very large in comparison to the plot sold which was barely 260 sq. metres. However, the fact remains that the respondent had miserably failed to produce any evidence whatsoever to show that the acquired property was similar to the plot of the land of the sale deed. As far as AW.1 Vaze was concerned, he stated that the plot of the sale deed was also a cashew garden where there were cashew trees standing, but AW.2, Shri Kalangutkar, did not support him on that aspect. On the other hand, AW.2, Shri Kalangutkar stated that there were no trees at all in the plot purchased by him. Further, AW.1, Shri Vaze had admitted that the acquired land was sloppy. The respondent had led no evidence to show as to what was the gradient of the said slope. On the same aspect, AW.2, Shri Kalangutkar was neither here nor there. I say so because AW.2, Shri Kalangutkar stated that the acquired property was at a higher level, but it was not a hilly place. He denied the suggestion that it was a hilly place and again he stated that the acquired property was plain and there were no ups and downs. The evidence of both the said witnesses examined in support of the reference, showed that AW.1, Vaze did not at all know about the nature of the plot of the sale deed of AW.2, and AW.2, Shri Kalangutkar, in turn, did not know the nature of the property acquired of the respondent and for that reason AW.2, Shri Kalangutkar did not even wish to commit himself as to which of the two properties of the respondent, was the subject-matter of the acquisition in this case. The said controversy does not end there. RW.1, Shri Mukundan who is the Assistant Engineer of the appellants had stated that the acquired land could not be used for construction purpose since the land was sloppy and besides the land was meant for orchard cultivation and was falling in orchard

zone. The learned Reference Court ought to have given more weightage to the evidence of RW.1, Shri Mukundan who was an Engineer when he stated that the land of the respondent was not suitable for construction. The respondent did not challenge his evidence by examining any expert. The very admission of AW.1, Shri Vaze that the acquired land was sloppy and the assertion of RW.1 that the acquired land was sloppy and for that reason could not be used for construction purpose, as matter of fact, ought to have been considered by the learned Reference Court and if it was considered, the learned Reference Court would have come to the conclusion that respondent's land could not have been assessed as land having building potential, and otherwise also was not comparable with the plot of sale deed.

15. The respondent had led no other evidence like evidence of capitalization of income method, etc. The respondent had produced only the said sale deed dated 9.9.1988 in support of his case for enhancement, which was of a small plot of land adjacent to the said main road on which AW.2 had built a house and the plot of the said sale deed could not have been used as basis for the purpose of enhancing the market rate of the acquired land of the respondent. A conjoint reading of the evidence of AW.1, Shri Vaze and RW.1 Shri Mukundan shows that the acquired land was not suitable for development.

16. In view of the above, this appeal is bound to succeed. Consequently, the Judgment/Award of the learned Reference Court dated 31.3.1999 deserves to be set aside and, as a result, the reference is hereby

rejected. In the facts and circumstances of the case, there will be no order as to costs.

N.A. BRITTO, J.

ssm.